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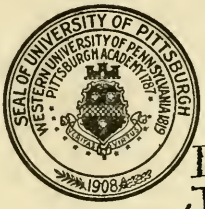

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SOME OBJECTIONS

TO THE

PROPOSED CONSTITUTION.

BY

ELI K. PRICE.

PHILADELPHIA:
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The following objections to the proposed Constitution were printed in The North American, The Philadelphia Inquirer, The Evening Telegraph, *and* Lancaster Examiner and Herald, *between November 20th and November 28th*, 1873. *They are reprinted in this form for more extended circulation.*

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 1.

[The North American has already assumed the ground that the proposed Constitution should be favorably acted upon by the people; but we deem it thoroughly just that both sides of the question may have fair hearing, and most willingly give place, therefore, to the following communication upon the subject, written as the signature will show, by a gentleman whose opinions are always entitled to the most careful consideration.]

Article II. Section 16. The State shall be divided into fifty Senatorial districts, according to population. That is, with a State population of 3,500,000, each Senator should represent 70,000 people. Philadelphia, with over 700,000 people, should have ten Senators, to be equally represented with other parts of the State. She can now have but eight Senators; and as the city increases in population in a faster ratio than the whole State, such disparity will increase as long as the Constitution shall so stand. Is this according to Republican principles? Is not one freeman as good as another? The Declaration of Independence taught us to believe as much. The first line in article one, section one, of this proposed Constitution declares "All men are born free and *equal*." The

Constitution of the United States declares: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." But the citizens of a part of Pennsylvania are not to be entitled to all the privileges conferred by this instrument upon the citizens of the other parts of the State. Of so much less consideration are the people of Philadelphia that it will require 100,000 of them, when we are 800,000, to be adequate to have one Senator, while the other 3,200,000 people, out of a population of four millions, will have forty-two Senators; that is, every 73,785 will elect one Senator. Thus the people outside of this city are made politically, in respect to the Senate, more than twenty-six per cent. more valuable than the citizens of Philadelphia. Now the Senate has the same power to tax the people as the House of Representatives; and so far as the representation in the Senate is made unequal so far is the principle of taxation without representation enforced—that bad principle which a British king tried to enforce, but against which our forefathers threw the tea that was to tax them into Boston harbor, and in resistance of which they achieved American independence.

Say not that such assertion is an appeal to prejudice. It is the plain fact of history; and those only can be insensible to the great wrong who are to gain by it, or who persuade themselves that they will have conpensation in supposed advantages in the proposed Constitution. In my opinion no proffered advantages can compensate for a wrong so violative of the first and most fundamental principle of republican government. It can have no justification but that which upholds all despotisms—that of power without right. A majority of the Convention must have voted for it; but that Convention was brought together upon *contrivances that did not make them fairly represent the people;* but whatever the majority, or howsoever elected, nothing can justify the insertion of a provision in the Constitution so flagrantly wrong and unrepublican. Better had we endure existing evils for a time, and keep the door open for the formation of a Constitution that shall be worthy, both in principle and expediency, of the great Commonwealth of Pennsylvania.

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No. 2.

Article III prescribes limits to the powers of the Legislature. Its sections ordain how bills are to be considered; how be passed and signed, and the yeas and nays be taken upon them; and of all local and special bills previous notice must have been given. All these directions are good; but suppose the legislators will not mind them, and their acts, without the prescribed observances, duly appear upon the statute book, will not the courts enforce them as the law of the land? They are not as a consequence of disobedience declared void. The courts are not authorized to look behind the statute book and to declare them invalid because the directions of the Constitution have not been observed. Are they not then idle? Will not they be laughed at when read in restraint of legislative action?

Sections 29, 30 and 31 prohibit bribery and corruption, and the guilty parties are to be punished by penalties to be prescribed by law; but if the distrusted Legislature do not pass the law that is to punish them the guilty will not be punished. But that which is more important, if acts be passed by bribery and corruption, or other fraud, they are nevertheless to stand and be enforced as laws, for they are not declared void, nor is there any method prescribed for ferreting out the fraud, nor any authority conferred upon the judiciary to declare the act void. And the 33d section makes it the duty of any member having an interest in a bill to be so candid as to tell his colleagues of it, and he is directed not to vote thereon. But suppose he be not so candid as to do so, or does vote, what then? Nothing. The bill becomes a law.

All the false and fraudulent bills that have ever been presented to the executive, passed or never passed by both or either house; or that passed and had then been interpolated by a clerk, may continue to pass, and will find no effective provision in this Constitution to defeat the fraud. The convention has here intended wholesome

reform, but has not provided the machinery to make their good intention effective.

By "Section 17. No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each house."

You read this with a hope that charitable and educationable institutions may have some relief when private ability shall fail to supply the requisites means, by getting the vote of two-thirds of all the members elected to the two houses. You read the next section and that hope expires:

"Section 18. No appropriations (except for pensions or gratuities for military services) shall be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

Strike out the exception for which only appropriation may be made, and the prohibition stands, "*No appropriations shall be made for charitable, educational or benevolent purposes to any person or community.*" What follows may be left out of view, for it has its own distinctive purpose, "nor to any denominational or sectarian institution, corporation or association." What then is left for the 17th section to operate upon, provided two-thirds of the members elected to the two houses will vote for it? It is difficult to say, and the ambiguity must await judicial interpretation. Yet nothing should be written so plainly as a Constitution. What will be included in the words *person* and *community* is uncertain. In law corporations are persons. If *natural person* only was meant those words should have been used. You may give to a *community* by giving to its charitable or educational institutions, or to persons to be used in a community. Is that prohibited? If so then nothing can be given under the 17th section. If by *community* the words city, county, borough or township were meant, why were not those words used? There would then have been some definiteness of meaning.

The prohibition is a distinct sentence: "No APPROPRIA-

TIONS SHALL BE MADE FOR CHARITABLE, EDUCATIONAL, OR BENEVOLENT PURPOSES, TO ANY PERSON OR COMMUNITY." To the ordinary apprehension, and to the legal mind as well, these words appear to be totally prohibitive. Are the people of our State prepared for such prohibition, or even the risk of it? If we accept them in our Constitution we can never hide them. We bind them on our foreheads to be seen of all people. "No APPROPRIATIONS SHALL BE MADE FOR CHARITABLE, EDUCATIONAL, OR BENEVOLENT PURPOSES." We will do this, too, while we are inviting all peoples and nations to come here to witness the evidences of our progress in civilization and refinement! All charity may decay, the institutions of learning languish, and benevolence be exhausted of resources; pestilence may sweep through the land, our cities be laid in ashes, yet the sovereignty of our great commonwealth, self-paralyzed by this Constitution, will be impotent to apply one dollar for the succor of her beneficent institutions, or the relief of a widely suffering humanity. The liberal deeds of other States may put her to shame, but in helpless sorrow she must endure her humiliation. We can be no longer proud of our good commonwealth when she shall be so stripped of her sovereignty, as to be disabled to do deeds of mercy and goodness.

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No. 3.

Article v, relates to the Judiciary. There is ample provision for the requisite number of judges, to be learned in the law. There is improvement in the creation of a separate Orphans' Court, and the suppression of the Register's Court. The four Courts of Common Pleas, with one Prothonotary's office, will be a convenience and saving of fees, in having but one office to search for the liens of judgments. One disadvantage, however, will be felt. The twelve judges must each, in order to perform his duty well, have to master too many branches of the law

Each must be prepared to try all civil causes in law and equity, now tried in the District Court and Common Pleas, all questions in the Orphans' Court, and also to hold the Court of Quarter Sessions, as well as try all grades of crime. A division of these jurisdictions would have made the judges of each court more perfect in the administration of its powers.

It is ordained by "Section 16. Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen, he shall vote for no more than two; candidates highest in vote shall be declared elected."

The inferior magistrates are to be elected by the same plan. Now let us, the electors, consider what is the import of this method of choosing judges. I admit that it is desirable to have judges on each bench of different political parties, that they may be a check on each other, and that the court may have the fullest confidence of the public. But are we to gain that result by disfranchising the citizen; by really depriving him of any choice in the matter? The fundamental and only republican rule is, that the majority of votes shall decide all elections; and that every electorial vote shall be as good as every other elector's vote. There must be party nominations of candidates to concentrate the votes and to make elections practicable.

As yet no law regulates the manner of making nominations, and in fact the citizens generally have no part in the work. It is all done by a few managing politicians; and the electors have but the poor privileges of voting for and against two nominees. To decide where the choice either way is a bad one is not much, it is true, but it is more than is permitted by the plan of this Constitution. Under it you have leave to cast your vote for your party's nominee, but you can cast no vote against the candidate of the opposing party. There is in fact no competition between them; they are not running for the same office; but each for a different seat. There is, in truth, no choice or election by the electors in the case. They but go through the form and show of election, for that was determined when the nomination was made. The members of the self-elected caucus were the masters of the whole situation. They thereby became mas-

ters of your votes, or made them valueless. They had already made the judges who are to decide upon all your dearest rights in this world—upon your rights of property, your rights of reputation and personal exemption from harm, your liberties, your life. In the serious business of the self-government of a people, and in the protection of all human rights the most dear and sacred, there should be no room for fraud or circumvention—nothing shamming or that cheats the freeman of his greatest right, that which more than all else makes him feel the dignity of his manhood, of its sincerest significance and truest meaning. All this such plan of voting does; disgusts the elector by the thought that he is put through so meaningless a performance, and brings republican institutions into disfavor, and self-government by the people in question. Indeed republican institutions must fail if there be not reform in this matter, the evils of which this feature of the proposed Constitution greatly aggravates. There must be parties in a Republic; its true life consists in the earnest contests between them, and their contests for office should be a simple, earnest and honest strife by each to put its candidate in, and keep the opposing candidate out, so that each vote shall do a true and double service, of putting one in and keeping the other out. A virtual decision of the question by a nominating convention also immeasurably increases the temptation and opportunity for frauds.

The great desideratum of all republicism is a plan of nomination of candidates for office in a manner that shall have legal sanction, and give equal opportunity to every elector and equal effect to every vote. It was hoped by some that the Convention would have consummated such an achievement, and have thereby earned the gratitude of all the true friends of free government. They made no such attempt, but have done that which, more than all else that could be attempted by any one professing republican principles, puts the science of self-government in peril of overthrow.

ELI K. PRICE.

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 4.

We present to the consideration of our readers the following reviews of the proposed Constitution, the first of them being the fourth article from the pen of Eli K. Price:

Ed. Philada. Inquirer:—The Article ix. is upon taxation and finance:

"Section 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit and institutions of purely public charity."

If the first half of this section is to be executed in Philadelphia according to its literal reading, it will produce great injustice and be a breach of public faith. The Legislature, representing the sovereignty of this Commonwealth, when, in 1854, it incorporated the whole of the county of Philadelphia into one city, and, in order to conciliate and obtain the consent of the land owners in the rural parts, enacted "that the said City Councils shall so discriminate in laying said city taxes as not to impose upon the rural portions those expenses which belong exclusively to the built portions of the city."

Section 39. The supplement to the Consolidation act of 1855, section 13, was in words more distinct and positive: "The Councils shall not impose taxes upon rural portions of the city for police and watchmen, for lighting and paving and cleaning streets, and shall make an allowance therefor of at least one-third of the whole city tax in favor of such section." And the rural township that composed the Twenty-first, Twenty-second and Twenty-third Wards were allowed to support their own poor as before (section 18), and be at the expense thereof.

Now the electors of Pennsylvania are asked to remem-

ber that when this proposed Constitution shall receive the sanction of the majority of the votes cast, they will have established a new government, and that all prior laws are only saved by a clause in the new Constitution inserted for that purpose. It is in the schedule thus—"Section 2. All the laws in force in this Commonwealth at the time of the adoption of this Constitution, not *inconsistent therewith*, and all rights, actions, prosecutions and contracts shall continue as if this Constitution had not been adopted."

Therefore, only laws not inconsistent with this instrument can continue so have existence. But it requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." That authority is the city corporation, and its territory is all the county of Philadelphia. If there be any escape for the farmers not to pay the full city tax, including police, lighting, paving, and for the poor, it is not apparent in what is written, and will not be known until the Supreme Court shall decide the question; yet the electors must blindly vote upon it within less than one month from their first chance to see the charter prepared for the new government.

While, however, it will be a new government that is to spring into being by the votes of the people, it is the same sovereignty that exempted the citizens of the rural sections from the payment of taxes from which they can have no return of benefits. That sovereignty that was obviously just in its former discrimination, must now incur the reproach of the injustice of abolishing it. The third section of the Declaration of Rights ordains, that no man can of right be compelled to support any place of worship against his consent; yet it appears that this same Constitution would compel many persons to pay taxes for lighting, paving, cleaning and watching the streets, and protecting the habitations of other people, as well as support their own poor, although no such benefit is received by them out of the taxes levied on them. Can the people anywhere wish to inflict such injustice?

The last half of section 1 restricts the Legislature very narrowly in its power of exempting property from taxation, and so narrowly as to seem unwise. The only latitude given for exemption is "Public property used for

public purposes; actual places of religious worship; places of burial not used or held for private or corporate profit; and institutions of purely public charity." And by section 2, "All laws exempting property from taxation, other than the property above enumerated, shall be void." Heretofore there has been exempted by general laws, burial grounds, universities, colleges, academies, school houses, endowed or established by law; court houses and jails, with the improvements and five acres of land attached, but all their property producing income was and is subject to taxation. Yet many of these places of education were using their income for purposes as good as these for which the taxes collected are expended. In such cases the collection of the tax is worse than useless.

Now such institutions must be erected and sustained by private liberality; and private liberality must raise and pay the taxes also; taxes, when collected, to be used for purposes no better, and often wastefully. Other governments, in this and other countries, establish and maintain their places of learning and schools of science and the arts, but ours is, by the proposed Constitution, compelled to tax them. Is all this intended to be in the progress of civilization? It is, in fact, a retrograde movement from civilization; is to obstruct our progress in the useful arts, in science, wealth, civilized culture and religion! I speak well advised when I say our movement is a retrograde one. In our Constitution of 1776, framed when our forefathers were in the glow of revolutionary patriotism, and Franklin exercised a prevailing influence (Chap. ii. Sec. 44), declared that besides common schools, "All useful learning shall be duly encouraged and promoted in one or more universities," and while that Constitution was in force the University of Pennsylvania received large donations from the State; and the Constitution of 1790, while the great men of the revolution yet lived, ordained that "The arts and sciences shall be promoted in one or more seminaries of learning (article viii, section 2). These things the Legislature were to see accomplished by governmental aid. Now the Legislature is forbidden to aid them, and is required to tax them.

But what are "purely public charities" which may escape taxation? This is quite as much unknown to

lawyers as to any other electors. They are not, I apprehend, the Girard College, Wills' Hospital, or any of our hospitals, dispensaries, orphans' or widows' asylums; certainly not the universities. I know not what they will be, nor who can tell me, except it be the Supreme Court at some future day. In the meantime we must vote in the dark.

ELI K. PRICE.

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 5.

The 11th Section of the IXth Aricle provides a sinking fund for the redemption of the State debt. "The said sinking fund shall consist of the proceeds of the sales of the public works or any part thereof, and of the income or proceeds of the sales of any stocks owned by the commonwealth; together with other funds and resources that may be designated by law, *and shall be increased from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of government;* and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt."

"Section 12. The moneys of the State, *over and above the necessary reserve*, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

"Section 13. The moneys held *as necessary reserve* shall be limited by law to the *amount required for current expenses*, and shall be secured and kept as may be provided by law."

Reading the three sections together we find that "the moneys held as necessary reserve shall be limited by law to the amount required for current expenses;" that "the moneys of the State, over and above the necesary reserve,

shall be used in the payment of the debt of the State, either directly or through the sinking fund." And then the sinking fund "*shall be increased* from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of the government." Thus all the taxes and revenues of the State are inexorably devoted to the ordinary and current expenses of the government, and to the sinking fund; and unless in case of war, invasion or insurrection, nothing can go out of the sinking fund but to pay the State debt. Of consequence no moneys of the State can ever be applied to any purpose of charity, education, or benevolence, denominational or otherwise, and, of course, to no Centennial, or other exhibition or Memorial hall, or to develop our resources, or to gratify or instruct the people. The State at her capital may have no park; no hall to exhibit the products of her mines and manufactories; no geological survey to develop our minerals; no cemetery to bury the soldiers who have fallen in the defence of their country; may establish no asylum for their widows or orphans, but may only aid institutions established by others for them (Section 19 of Article III.) The State debt may be paid off, and the prohibitions will remain all the same in the Constitution.

Surely but few of the members of the Convention can have considered of these consequences. Some of them surely have, or these clauses would not have been in it. Now read in connection with them the second section of the schedule, continuing in force under the new government, only the laws not inconsistent with this proposed constitution. The moment it shall be adopted all laws inconsistent with it will be repealed. How many they will be no one can now foresee; but they will be many, and give work to the judiciary for years to come.

I deeply regret to speak of what I am about to say; to dampen the ardor of our people and alarm their cherished hopes and patriotism in respect to their preparations for the great Centennial Exhibition of 1876; but we had better look to the consequences before we vote for a Constitution that must extinquish our dearest aspirations for this city, State and nation; so far as our State is to have part in it, and derive a glory in the good it is to do, in

that great measure of education and material development, and more than all besides calculated to make our States a united people. By an act of the Legislature of Pennsylvania, passed the 27th day of March, 1873, it was enacted, "That the sum of one million of dollars be and the same is hereby appropriated for the erection of a permanent Centennial Exposition building for the people of this Commonwealth, and for the use of the Centennial Anniversary of American Independence, under the direction of the United States Centennial Board of Finance, incorporated by Act of Congress," the said hall to be erected in Fairmount Park. No part of this money has been paid to the Centennial Board of Finance. The State Treasury is pledged for but one-fourth of that sum, and three-fourths are to be raised by taxing the street passenger railway companies of Philadelphia; and if so raised, an appropriation may be requisite by the next Legislature, which it would not have power to make after the adoption of the Constitution now proposed. It would be a law inconsistent with the restrictions of the Constitution. Again, the existing law of March last would not be continued in force by the second section of the schedule, because a State tax on the Philadelphia passenger railway companies, not including all other such companies in the Commonwealth, would directly conflict with the first section of Article ix: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." No part of this tax has been raised, and its validity is the subject of pending litigation.

And still again, the appropriation of one-half million of dollars by the State hangs upon the appropriation by the city of Philadelphia to the same object. This appropriation has been made by the City Councils, but has not been paid to the Centennial Board of Finance. Suppose this Constitution to be in force on the first day of January next, repealing all laws inconsistent with it. Then section 7 of article ix will stand prohibitive against the General Assembly authorizing any city appropriating any money to any corporation, association, institution, or individual. It will be a question for the judiciary to determine whether that part of the law will stand as consistent with the new Constitution or not. In the absence of all decision I can-

not say that my opinion on the question would be better than that of anybody else; but I know well that there is enough of question about it to distress me, for I should very much dislike to have the question raised against the Centennial Board. It would be most unfortunate, after our most impressive solemnities of last Fourth of July, if by this new obstacle we should be crippled in our resources to meet the expectations we have raised in our sister States and all the world.

Let us here pause for a moment to contemplate the character of the government we are about to create in such haste, before one in a thousand of the electors can well understand it. In thinking of it I cannot but fear we shall never again look upon our State as capable of being personified as a kindly protectress; as a mother who loved and cherished her children. I feel that if we shall still share her regards and affections it must be as those of one who, fettered and powerless, will look upon us in sorrow as made helpless to do us good, in all those respects that most conduce to human welfare and happiness. To my view the makers of the Constitution have endeavored to invest her with all the characteristics of a miser. She is to give nothing to charity, learning, or benevolence; and the charity of her citizens, their schools of science and learning; their endowments, and those of religion, she will tax; will abstract their means for purposes no better, often not as good, as the objects to which they had been devoted by private benevolence. She can never come up to a standard equal to that of her good private citizens. In that she is humiliated; and all her people are made to share in that humiliation. It is the glorious characteristic of all our States and cities that if one part be afflicted by a great calamity all others are prompt and generous in affording relief. But our State may not hereafter indulge in the deeds of humanity; for she may do no deed of charity or benevolence "to any person or community" (article ii, section 18); she may only pay her debt and the "ordinary and current expenses of government" (article ix, sections 11, 12, 13); nor shall her General Assembly allow any county, city, or borough to appropriate any money to any corporation, association, institution, or individual" (article ix, section 7). If a

citizen were thus selfishly to sheath himself from performing all social and humane duties toward his fellow-men he would justly be loathed and hated of mankind. I say, again, God save us; for if we cannot give to others in their suffering we may not expect their good gifts in the times of our afflictions.

ELI K. PRICE.

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 6.

The subject of special hostility by this Constitution appears to be legislative exemptions of taxation, which I hope I have shown to be groundless; to special and fraudulent legislation, as to which I am not at issue with the Convention, though many of the bad bills I believe to be the work of clerks and not of members, and to corporations, and these have committed sins justly incurring censure. The railroads are chiefly the corporations dealt with by the instrument in question, and some salutary restraints are put upon them, which may in part be effective, and in part may not. Article xvi, section 6, restricts corporations to their expressly authorized business, and to that the Supreme Court has always held them. Section 5, subjects them to cumulative voting. That may be of doubtful expediency. As in the political field it is to enable a minority to have a representation, and that minority may put offensive elements into the management not compatible with its welfare.

Ordinarily, less than half the stock votes will be cast, and those cast will be usually for one of two opposing tickets, when the highest numbers may not exceed one-fourth of the whole vote. One, two, or a few of the largest shareholders, watching the course of voting, if not strong enough to defeat the whole strongest ticket, will then concentrate their votes on just so many candidates as they can carry; perhaps enough to make a majority; if not, they will have a minority representation. They will have the advantage of all the absentees to increase their representatives in the board. Stock may be suddenly

bought for the purpose of capsizing the management, and may prove successful when little expected, and the opportunity seized for plunder. I may here say of the cumulative system and minority representation, introduced in several places in this new project of a Constitution, is the idea of Thomas Hare, Esq., of London, and was supported by John Stuart Mill, but did not in England find favor with the practical statesmen, with the exception of some "triangular elections," or voting for two in three candidates. The best reformer in England, and one of the purest Liberal statesmen of this age—John Bright—lately denounced it as the worst electoral contrivance which has ever been devised.—(*Saturday Review*, November 1st, 1873, p. 571.)

Every departure from the republican principle that the majority shall rule and take the responsibility of ruling, with the risk of losing power by the abuse of power, is to incur weakness; is to disfranchise the electors; is to allow caucuses to usurp the franchise of the freemen. It is a fatal concession for any majority to make. The majority represents the voice of the people when moved to sustain any great policy or measure of the people. And what is the value of a majority if a minority of able men are allowed to rule a Congress, a Legislature, or Convention. Just so President Grant's first term was hampered by its enemies; just so this Constitutional Convention has been influenced, and, if Congress had been so weakened in its measures by a minority of one-third of the men of ability who opposed the war, the rebellion could have never been put down. But should we overlook all the good corporations have done for us—the banks, the insurance companies, the turnpike, canal and railroad companies, the colleges, universities, churches? They have been the life of our material prosperity, and created and preserved our scientific, educational, moral and religious standing, and made it what it is.

The former framers of Constitutions were careful to preserve their rights inviolate. That of 1776 ordained that "All religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious or charitable purposes, shall be encouraged and protected in the enjoyment of the

privileges, immunities, and estates which they are accustomed to enjoy, or could of right enjoy under the laws and former Constitution of this State." (Chap. i, sec. 45.) That of 1790 ordained that "The rights, privileges, immunities and estates of religious societies and corporate bodies shall remain as if the Constitution of this State had not been altered or amended." (Art. vii, sec. 3.) How conservative of vested rights, how just toward the men of enterprise, science and religion, were those political fathers of our Republic, whose appended names their descendants love to read, and feel to share their honor as they read them, and whom we all love to hold in honor.

In the instrument now under consideration I find no special clause to save the rights and privileges of corporations of any kind, nor the vested rights of shareholders in them. The spirit of the thirteen sections of article xvi is hostile to all corporations. All existing charters not yet *bona fide* organized are declared void. (Section 1.) The General Assembly is forbidden to remit the forfeiture of any charter, except they be made subject to the provisions of this Constitution. (Section 2.) Their property is made subject to endless repetitions of taxation for public use. (Section 3.) All elections for directors are subjected to cumulative voting. (Section 4.) Section 5, 6 and 8 are law now. The General Assembly may alter or annul charters now revocable by law or hereafter created, doing no injustice to corporators. (Section 10.)

Article xvii relates to railroads and canals. Its provisions are somewhat restrictive, but may not prove so unfriendly as may have been expected. "Any association or corporation, organized for the purpose, shall have the right to *construct and operate a railroad between any two points within this State*, and to connect at the State line with railroads of other States." (Section 1.)

This, indeed, is an extraordinary privilege; connected with the right secured by the previous article to take any other railroad or canal by the power of eminent domain. It may not indeed, by the fourth section, consolidate with or control any other railroad or canal corporation, whose work is parallel or competing; but what signifies such inhibition when any railroad company so authorized by the Legislature may construct their tracks

and run their locomotives from the Pennsylvania railroad terminus west of the Schuylkill, down Market street to the Delaware avenue, and down Broad street to League Island. Surely the Legislature, though bound by many withes of restriction, and the members, by an iron-clad oath, even with a fettered railroad corporation, may do great things within the limits of this new Constitution.

The little horse railroad companies may not by section 9 construct any railway within the limits of any city without the consent of the local authority, but any railroad big enough may buy by the valuation of a jury any kind of a railroad, or go where there is no railroad without the consent of the local authority, and drive their steam locomotives through the streets of any city in the State. They "shall have the right to construct and operate a railroad between any two points within this State." It may intersect with any other railroad within the State or at the State line; to do which should be profitable to them. Everybody and all property may be transported over them, and that should be profitable, but the company must not *unreasonably* discriminate in charges, nor should they be unreasonable if they want to do a profitable business. There is here a beautiful accord between the prescribed rule and the interest of the company; and there is something more beautiful in it a beautiful simplicity. The company, of course, is the only judge of what is reasonable or unreasonable discrimination.

Then read on in the third section, and there is more charming simplicity:—"Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station." That is to say, the company must charge persons and property no more for a short than a long distance; that is, no more for a small service than a greater one. That seems very reasonable, and any carrying company would be unreasonable to complain of it. If it had said that the company should charge no more for a short distance than the proportionate part of the charge for a through trip, there would have been more point or purpose in the sentence, and, perhaps, great

severity and impolicy in it, as that would have seriously damaged the company in competing for distant through traffic, which it can only induce by cheapness. Section 5 is quite an iron band of constriction upon transporting companies. They may not mine or manufacture articles to keep their transportation, or engage in other business than that of common carriers, nor hold lands, except such as are necessary for their carrying business.

And such has been the law, except where there has been express authority to do more. Yet I suppose common carriers might construct their own locomotives, cars and boats. And I suppose friendly mining or manufacturing companies might own lands and manufactories, and operate them, and transport by the most convenient railroad or canal, and the stockholders might be the same, or much the same, as those of the transporting company; or the latter might lend moneys to their mining and manufacturing customers, and thereby increase products for transportation. This section may, therefore, be quite harmless.

Next read Section 8:—"No railroad, railway or other transportation company shall grant free passes or passes at a discount to any persons except officers or employees of the company." Truly no railway company will justly complain of this section. Nothing could be more politic, just or wise, and it is to be hoped that they will obey it without exception other than above expressed and to send the poor to their homes, and the ministers to preach the Gospel. If they should do so it ought of itself to make a good dividend for the shareholders. But if they should wilfully disobey what is enjoined upon them, I do not see any penalty inflicted. It may be expected, however, that when the members of the Legislature shall get no free passes, they may deal less tenderly with the railroad companies. Hence the ordination of section 12:—"The General Assembly shall enforce by appropriate legislation the provisions of this article." Yes, even the Legislators are trusted to deal with their old corruptors, although they have been themselves laced in straight jackets and proclaimed to the world as untrustworthy. But then they have been made to take a hard oath, and this section says, "*Shall* enforce by appropriate legislation the provisions of this article."

But suppose they don't do so; why, then they don't, and there's the end of it. We find repeated instances in this instrument of a practical wisdom that is not new, but of which there was an illustration in the time of Queen Elizabeth:—Watchman—"How if a man will not stay?" Dogberry.—"Why, then take no note of him, but let him go." We may not overlook the fact in a republican government that they who are to exercise the sovereign power of making laws to meet the needs of the State must be vested with large authority. If they abuse it the remedies are three—the free press and public opinion, frequent elections, the power of the judiciary. The first never sleeps, the second is impaired by this instrument, the last is not clothed with the requisite power to apply the remedies. Now no one has more grieved over some things the railroad companies have done than I have, especially in procuring legislation, and though when in the Senate I would not accept their free tickets, I am not willing to forget the great public benefits of their works, for which we should treat them as friends and not enemies.

All the successful internal improvements of this country have been made in my day; the Lancaster and Pittsburg turnpikes in my infancy; the National road and all the canals and railroads since the beginning of my manhood, and their progress, and the consequent development of the whole country under their benign influences, has been to me an incessant source of pleasure, ever increasing with the number of my years, but to go on increasing, and not to culminate in their greatness for ages and centuries to come. I have never received a favor from one of them; yet, as the City of Philadelphia has been largely developed by them, and the coal regions made accessible by them, they have for me, as well as for all others, added value to my investments, and have my gratitude. Who can step into a Pennsylvania car at Jersey City, lettered with the name of our beloved State, and not feel a pride that he may be transported thence in a palace car to the remotest South and farthest West with the ease and comfort of his home life, yet charmed by the scenery of every variety of country—agricultural, with rolling surface, or the wide prairie, and the rivers and mountains, until he shall behold the Pacific?

ELI K. PRICE.

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 7.

The Constitution of 1776 declared a principle that should have lived to this day and forever. It was thus therein declared: "*As representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land;* therefore, the General Assembly shall cause complete lists of the taxable inhabitants in the city and each county of the commonwealth, respectively to be taken and returned to them," &c. (Sect. 17.) The Constitution of 1790 placed no other restriction than this: that no city nor county should be divided in forming a district, and that the districts should be so formed as to be entitled to no more than four senators. The number of representatives were to be not less than sixty nor more than one hundred, and the senators were to be not less than one-fourth nor more than one-third the number of the representatives. Between these limits the Assembly was to fix the number of each. There was no compulsion to give the city a disproportion in the Senate. In 1790 the State's population was 434,373; that of our city of two square miles, 28,522; the proportionate constituency of 33 senators, 13,163. So the city could have no more than two senators. In 1840 the State's population was 1,724,033, that of our city 93,655, the proportionate constituency for 33 senators 52,243; so that we had then no claim to more than two senators; so that neither convention intended the city any disfranchisement. But on the 2d of February, 1854, our city was extended over an area of 122 square miles by the act of consolidation. In 1850 the State's population was 2,311,786, the proportionate constituency of 33 senators was 70,031; but our enlarged city's population became in 1854, by the preceeding Federal census, 409,045, showing then a basis for nearly six senators. There was, therefore, no bad precedent afforded by any previous Constitutional Convention. The disparity came by the consolidation act, whose friends never doubted

that justice would be done the enlarged city at the first amendment of the State Constitution.

Now let us see how groundless was our just expectation. In the winter of 1856 Mr. Buckalew introduced into the Senate his amendments, which became, after modification, part of the Constitution in 1857. He well knew our deficient representation in the Senate, as a consequence of the new city charter embracing so large a population, and he and the majority would listen to no change in this respect by the city's senators—then Crabb and Price, and the county's—then Brown, Ingraham and Pratt. Nay, the bill had in it this clause: "BUT NO CITY SHALL BE ALLOWED MORE THAN FIFTEEN REPRESENTATIVES." That meant only Philadelphia; and that she should then be shorn not only of one-third of her rightful number of senators, but also of any increase of representatives in the house for her disproportion of increase forever thereafter. This proposed clause was defeated. I made a speech against it, then printed and now before me. The argument then used by Mr. Buckalew in support of this limitation, as I well remember, was that Philadelphia contained many colored people and foreigners not entitled to vote. Yet the basis of representation at that time was *taxables* and not population, and many colored persons and foreigners were taxable for the property they held. But even that reason could afford little pretext for a reduced representation in 1873, when colored citizens have the same rights as white men, and foreigners not entitled to vote abound in the mining and manufacturing districts out of this city, in as large proportion as in it. But why base the Constitution on a conjecture, when representation is required to be equal? Answer: Only because there was the power and a willingness to use it.

I know of no example of such injustice except in the enlightened and progressive State of Delaware, still distinguished by the use of the whipping post. Their Constitution gave to each of her three counties seven representatives, which the Legislature, by two-thirds of each branch, might alter; but the fourteen representatives from Kent and Sussex, and two-thirds of the Senate, will never allow New Castle, though increased to half the whole population, to have more than seven representa-

tives! Of course such a Legislature will not enact a law to provide for a better constitution; nothing but a revolution can restore the people to their rights.

I think it most probable that no member of the Convention ever knew, or if they did ever know, failed to remember, except Mr. Buckalew, the history of the accidental manner by which the Constitution became restrictive upon the Senatorial representation of Philadelphia, when no previous convention, as things stood at the time, could have expected the disfranchisement of the citizens of any city. They only thought of cities as they existed at the time. But the members of this Convention, for the first time, have directly met and decided to disfranchise a large proportion of the electors of Philadelphia, amounting, if taken by the population of 1870, to 110,543 citizens unrepresented in the Senate. This reproach they must bear in history, whose justice will withhold no just censure.

My friend, Mr. Broomall, and the esteemed editor of the Public Ledger, seem to think that we should accept the proposed Constitution because the new retains only half the wrong of the old, which they both denounce as unjust—the Public Ledger as "monstrous injustice"—and they both accept the new as a step toward reparation of the wrong; the Public Ledger even calls it "a long stride toward setting that wrong right." Let us see now if that be quite accurate. Four out of thirty-three Senators is 12.12 per cent. of Senatorial representation. Eight out of fifty Senators is 16 per cent. of that representation; while the city's population of 1870 of 674,022 in the State's population of 3,521,701 entitles us to 19.42 per cent. of the representation in question. This long stride is, therefore, but a half-way step toward the remission of the wrong done to the city's electors. Will the Public Ledger be kind enough to set this correction before its many readers, whom I desire much to reach.

Some persons, not close in calculation, take the idea that as we are to have eight Senators we shall be twice as well off as before, forgetting that the Senate is diluted by having fifty instead of thirty-three; whereas the gain is little over one, or five in thirty-three, which would give the city a representation in the Senate of 18.18 per cent.,

when we are entitled to 19.42 per cent., or nearly one-fifth of the whole.

I have given the history of this "monstrous injustice," to satisfy the excellent editor of the Public Ledger and the public also, that from my opportunities and most anxious consideration of the subject, I was the most unlikely of my fellow-citizens to "overlook the gross injustice of the present Constitution;" for I could not consider that the greater wrong could be any justification or apology of the great wrong attempted to be perpetrated and perpetuated in the new Constitution. No former Convention, or the people, had directly voted upon the matter; now the people are asked to vote upon it with no proper opportunity of information; while more than half the editors of the State preclude them from the knowledge requisite to intelligent voting, by refusing to let them have the views opposed to their own. Is this just toward their subscribers? These might like to judge for themselves.

But are we justified in sanctioning a great wrong and outrage; flagrant treason to republican principles, because the injustice is made only half as great as it has been? We have no right so to compromise so sacred a principle. We had better endure our present injustice until our fellow-citizens shall lift from us the heel of oppression.

ELI K. PRICE.

SOME OBJECTIONS TO THE PROPOSED CONSTITUTION.

No. 8.

I desire to bring these, to me unpleasant criticisms, to a close. I intended to expose only the principal and most unbearable provisions. Others have noticed several objections which I have not, that I might not be too tedious. I have been asked by "Elector," through THE INQUIRER, for my views as to the new magistrates to be elected for Philadelphia (article v, section 12). I am not surprised at the desire of the convention to get rid of aldermen com-

pensated by fees, since in numerous instances that system led to great abuse and oppression. The mode of election of the new magistrates is obnoxious to the strictures made as to the method of electing judges of the Supreme Court. It is a substantial disfranchisement of the electors, and a substitution for them of electoral boards to consist of politicians who can be named delegates in their several wards, without any legally prescribed plan or qualification. Thus for want of fitting prescription of law lawless men may make their own judges in defiance of the popular vote. They of course will expect favors from judges of their own creation. It is this lower class of judges with those of the Supreme Court who are to be elected by voting only for one when two are candidates, and for two when there are three candidates. But, if the principle was deemed good, why was it not applied to the judges of the Common Pleas?

I have been treating of commissions rather than omissions. I now say that large cities needed a protection not found in this instrument. It is truly a large protection that no local or special act can be passed incorporating cities "or changing their charters." (Article ii, section 7.) But the citizens of no city have received any protection from the evils of bribery, corruption and fraud. The convention has sought diligently to throw guards around the Legislature. (Article iii.) Bribery and corruption are forbidden. (Sections 29, 30.) Truly, acts may be passed of that nature to forbid such offences, but will they be? (Section 31.) But why should cities not have had directly the benefits of sections 29, 30 and 31, and yet more important, of section 32, which compels witnesses to testify in such cases? We should then not witness the discreditable scenes we are often compelled to see, when committees of Councils attempt to purge themselves, by guilty witnesses setting them at defiance. And over such crimes there should have been extended an ample judicial power to investigate, try and punish the criminals, of course with power to commit refusing witnesses for contempt. Of this necessity the convention was amply warned. They have left us as helpless of remedy as before, and thus have virtually deferred to and perpetuated the municipal rings and permitted public plunder to flourish.

The members of the convention seem not to have known or to have forgotten our municipal experience for the past twenty years. Those who framed the consolidation act in 1853, relied more upon the popular virtue than the city politicians here justified. They made elective by the people the Board of Health, the Prison Inspectors, the Guardians of the Poor, the School Directors. The care of Girard College and other trusts fell, by the wills of the testators, under the city's control. The management of the city departments by ward politicians became so grossly corrupt and foul as to be called the "buzzards' nests." The body of the people revolted at the development, and sought and found relief in the Legislature. In 1859 the Board of Guardians of the Poor was abolished, and its members were made appointable, three by each of the Courts of Common Pleas, District Court and Supreme Court, and three by the City Councils. The Board of Health was abolished, and the future members were to be appointed in the same manner. The appointees were all to be "respectable citizens." The appointment of the Prison Inspectors had, in 1856, been placed, five in the Supreme Court, three in the District, and three in the Common Pleas. And on the 30th of June, 1869, the Legislature passed an act authorizing the judges of the Supreme Court, District Court and Court of Common Pleas to form a board to appoint trustees of the Girard and other estates held in trust by the city for charities.

But now we are to be shorn somewhat of this protection; never sought or desired by any of the judges, but found necessary to preserve our citizens from some of such gigantic plunder as New York has suffered. The 21st Section of Article v ordains, "No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial; nor shall any of the judges thereof exercise any power of appointment except as herein provided."

The proposed Constitution seems not to have abolished these and other commissions. On the contrary Article xv Section 2, recognizes their continued existence. But no power is designated for filling vacanies in their boards, and, so far as it shall not be judicial, it must be political.

But no local or special act can now avail for our relief. (Article ii, Section 7.)

But several questions now arise which would have been avoided if the proposed instrument had been more explicit. The *judges* of the three courts now constitute the board of appointment of trustees of the city trusts, and the judges of the other courts than the Supreme do not alone constitute that board, nor are they alone authorized to fill vacancies. The difficulty is the same as to the Boards of Guardians of the Poor, the Prison Inspectors and the Health Department, as to which the *courts* act separately, so although the judges of the Court of Common Pleas and District Court, are not forbidden to appoint, where the power was in them, or either of them, exclusively; their power where there was to be joint action with the Supreme Court, or its judges, seems to have been lost. Where the power was in the Common Pleas and District Court, as their jurisdiction is preserved to the Common Pleas, the power of appointment probably remains.

Now conceive, if you can, what will be the result. With the terrible expositions we have had in New York, without any apparent deterring influence here, and with the conviction and condign punishment there of the arch traitor to public trusts, yet striking no terror here, we have no ground for hope that things will be better here than they were in our worst days of municipal abuses. What we see done in departments not under judicial appointment, should satisfy us that all which may fall under political appointment will suffer a like relapse. Here in this city more than half the property of the Commonwealth is owned, here reside one-fifth of her population, and here, where political power is most liable to abuse, we are, by a few imperative lines, deprived of the most reliable protection we had, and that without any enlargement of judicial remedy. The convention could not have been ignorant of this peril to us, else why were the electoral officers of our city, exceptionally to all others in the State, denied the right to take the vote upon the Constitution? Was it not because the convention distrusted the honesty of our city officials? It could have been nothing else.

No intelligent citizen doubts that some members of Councils are in some way interested in the sale of materials furnished, or in the price of work done for the city. It is believed very generally that no street is graded or paved, no bridge or school house is built, no sewer constructed, by municipal authority, without the levy of a heavy percentage for Councilmen; but, for want of proper constitutional or legislative provision, there is no adequate remedy to expose and punish the crime; and the older members of Councils will tell you that this wrong is ever on the increase. Whence, then, can come our deliverance, if not from the honest yeomanry of our country and the substantial citizen of the interior? There has always been my reliance in our extremity; as it was in the periods of our riots; but in this instance I have been wofully disappointed. All the imputations here made must be taken with many honorable exceptions in Councils, to whom the citizens owe praise and gratitude.

It is said on the part of the advocates of the new Constitution that it is not of the honorable that it encounters opposition, but of such men as belong to or profit by rings. The latter do not lack the instinct to scent their own interest, nor the sagacity to perceive where the doors will be opened for admission to plunder. It would be most unnatural that they should oppose the presentation of the opportunities they most desire. The proof is demanded. The fact is, there is an awful silence prevailing in view of issues so stupendous, a silence that portends danger to the city and State, but especially to the city. It seems too much to expect of our citizens that they should read, study and digest so long an instrument, full of new provisions, in half a month. I have heard one very intelligent citizen, who attempted the task, say that it would take a John Marshall many months to master its comprehension in all its bearings.

Here I propose to close these numbers. Less than I have done I was not at liberty to omit doing. I have been told by the confident of success to "stand from under," meaning that the vote of the people would drive this new Constitution as an avalanche over us, and then its opponents would suffer. Politically, the threat has no significance for me. If I suffer, as I expect to suffer, I

will but suffer with my fellow-citizens; but then I will not suffer as one without hope, for it is in the wisdom of Providence that evil has ever its mission of reform. Such good I expect to come from a brief trial of this Constitution. So much one of its signers has said to me. Instead of aiming to be on the successful side, if the vote shall carry the Constitution, I much the more desire in that event to have recorded my protest against it. In age the sense of duty becomes of more paramount importance. What are a few temporal advantages compared to peace of mind—a peace that can only be had by obedience to a sense to duty. "Woe is me" if I do not obey it! In a few fleeting years the places that now know me shall know me no more forever; but the example and warnings I shall leave may be of some value in the future. I have had much to do with the legislation of this State, and especially that relating to this city. Three years I spent in the Senate to carry, secure and perfect the city's charter. Nothing can be more painful than to see its powers abused by bad men. The remedy must and will in time be applied. If I can but point to it I shall have done good service. The city's welfare and the State's prosperity are most dear to my heart, are bound up with the fibres of my being. My prayers must and will ever be, God save our beloved city of Philadelphia; God save the Commonwealth of Pennsylvania.

ELI K. PRICE.

Note.—Two suggestions have been made to me by an eminent legal mind: First, That there is no provision made for the appointment of a Prothonotary of the Supreme Court, now vested in the judges of that court by the existing Constitution. Second, That the members elect to the Legislature shall be the first General Assembly under the proposed Constitution. This was deemed necessary in the Schedule of 1838. It has been deemed necessary as to every judge and officer in the State by the late Convention. Are we to have no Legislature for 1874?

E. K. P.